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SPINAL KINETICS, INC.

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**  
15

16 DEPUY SYNTHES PRODUCTS, LLC, )

17 Plaintiff, )

18 v. )

19 SPINAL KINETICS, INC., )

20 Defendant. )

21 )  
22 AND RELATED COUNTERCLAIMS )  
23 )  
24 )  
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26 )  
27 )  
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Case No. 4:13-CV-00875-RMW (PSG)

**STIPULATION AND [PROPOSED]  
ORDER TO STAY CASE PENDING  
APPEAL OF RELATED CASE**

1 On February 26, 2013, DePuy Synthes Products, LLC (“DSP”) filed its complaint in the  
2 present case (“the *DSP* case”). Dkt. 1.

3 On March 15, 2013, the Court ordered the present case related to *Synthes USA, LLC (f/k/a*  
4 *Synthes (U.S.A.) v. Spinal Kinetics, Inc.*, 5:09-CV-01201-RMW (“the *Synthes* case”). Dkt. 12. The  
5 *Synthes* case involves allegations relating, *inter alia*, to the validity and/or invalidity of U.S. Patent  
6 No. 7,429,270 (“the ‘270 patent”) and the infringement and/or non-infringement of the ‘270 patent  
7 by Spinal Kinetics’ M6 implants. The *DSP* case also involves Spinal Kinetics’ M6 implants, and  
8 includes allegations relating, *inter alia*, to the validity and/or invalidity and infringement and/or non-  
9 infringement of U.S. Patent No. 8,382,838, which is a continuation of the ‘270 patent. DSP asserts  
10 that both the ‘270 patent and the application maturing into the ‘838 patent were previously assigned  
11 to Synthes USA, LLC; and that the plaintiff in the *DSP* case, DePuy Synthes Products, LLC, is  
12 presently the assignee of both the ‘270 patent and the ‘838 patent. The *Synthes* case was tried to a  
13 jury and final judgment was entered on April 23, 2012. *See* Dkt. 524 in the *Synthes* case. The  
14 *Synthes* case is presently on appeal to the United States Court of Appeals for the Federal Circuit,  
15 Appeal No. 2013-1047, -1059.

16 On April 22, 2013, Spinal Kinetics filed its “Second Corrected” answer and counterclaims.  
17 Dkt. 17. Spinal Kinetics’ counterclaims include, *inter alia*, claims for declaratory judgment that the  
18 ‘838 patent is invalid and not infringed and antitrust and other claims that Spinal Kinetics contends  
19 are based at least in part on the outcome of the jury trial and judgment in the *Synthes* case, which is  
20 now on appeal to the Federal Circuit.

21 DePuy Synthes Products, LLC’s response to Spinal Kinetics’ counterclaims is presently due  
22 on May 13, 2013.

23 Because of the relatedness of these two actions, the potential impact on the *DSP* case of the  
24 Federal Circuit’s decision in the *Synthes* case now on appeal, and to preserve the resources of the  
25 parties and this Court,  
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1       **IT IS HEREBY STIPULATED AND AGREED**, by and between the parties, through their  
2 undersigned counsel of record, and subject to the approval of this Court, that the present action is  
3 stayed in all respects, and all current deadlines are vacated. Such stay shall be without prejudice to  
4 the substantive rights of any party, and shall continue until the Federal Circuit's mandate in the  
5 appeal of the *Synthes* case is issued, or until such other time as determined by the Court, including in  
6 response to a motion filed by either party to lift or extend the stay.

7  
8 Agreed to and submitted by:

SIDLEY AUSTIN LLP

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10  
11 Dated: May 6, 2013

By: /s/ Jeffrey M. Olson  
Jeffrey M. Olson  
Attorneys for Plaintiff  
DEPUY SYNTHES PRODUCTS, LLC

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14 DICKSTEIN SHAPIRO LLP

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16 Dated: May 6, 2013

By: /s/ Robert W. Dickerson  
Robert W. Dickerson  
Attorneys for Defendant  
SPINAL KINETICS, INC.

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23 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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26 Dated: \_\_\_\_\_, 2013

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Honorable Ronald M. Whyte  
United States District Judge

1 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty  
2 of perjury that concurrence in the filing of this document has been obtained from Robert W.  
3 Dickerson.

4  
5 Dated: May 6, 2013

By: /s/ Jeffrey M. Olson  
Jeffrey M. Olson  
Attorneys for Plaintiff  
DEPUY SYNTHES PRODUCTS, LLC